



1320 RXR Plaza
Uniondale, New York 11556-1320
Telephone 516.227.0700
Fax 516.227.0777
www.farrellfritz.com

Domenique Camacho Moran
Partner

Direct Dial 516.227.0626
Direct Fax 516.336.2762
dmoran@farrellfritz.com

Our File No.
14047-120

March 14, 2011

By ECF ONLY

Honorable E. Thomas Boyle
United States District Court
Eastern District of New York
Long Island Federal Courthouse
100 Federal Plaza
Central Islip, New York 11722-9014

Re: *Crump v. NBTY, Inc.*
Docket No. 10-cv-0632 (E.D.N.Y.) (JFB) (ETB)

Dear Magistrate Judge Boyle:

Farrell Fritz, P.C. represents defendant NBTY, Inc. ("Defendant") in the above-referenced action. Pursuant to Your Honor's March 4, 2011 Order, we write regarding NBTY's outstanding request for attorneys' fees related to Plaintiff's failure to comply with his discovery obligations. We respectfully request that attorneys' fees be assessed against Plaintiff's prior counsel, Annette Totten.

As Your Honor may recall, an Order was issued on December 8, 2010 directing Plaintiff to produce automatic disclosures by December 13, 2010. Plaintiff failed to comply with that Order and his counsel ignored every subsequent effort made by Defendant to complete discovery in a timely manner. The deadline to complete discovery – January 14, 2011 – passed without even an indication from Plaintiff's counsel as to when anything would be produced.

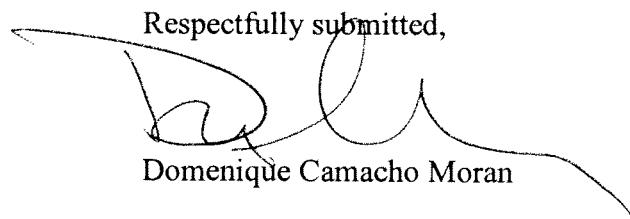
Throughout this litigation, Defendant understood that Plaintiff was represented by Annette Totten, who is the attorney of record to date. Although Ms. Totten indicated that her office "no longer represented" Mr. Crump, she never took any steps to be relieved as counsel. Moreover, Ms. Totten ignored the Court's Order by failing to provide the required automatic disclosure and refusing to engage in any other discovery. On January 4, 2011, Ms. Totten filed a Notice of Consent to Change Attorney (the "Notice"), identifying Harriet A. Gilliam as her replacement, but again, no steps were ever taken by Ms. Totten to withdraw.

Plaintiff's former counsel's repeated failure to comply with the orders, rules and procedures required by this Court should be sanctioned in accordance with the December 8 Order, which provided that "continued stonewalling of discovery by Plaintiff and his counsel will expose each to further sanctions." While Plaintiff has represented to this Court that he was

Honorable E. Thomas Boyle
Page 2
March 14, 2011

unaware of the missed deadlines, his former counsel has not even offered an explanation for her failure to comply with the discovery deadlines and Your Honor's Orders. Defendant should not bear the costs associated with such inexcusable conduct.

Thank you for your consideration.

Respectfully submitted,

Domenique Camacho Moran

cc: Annette M. Totten (*by ECF only*)
Harriet A. Gilliam (*by ECF only*)
Scott Kreppein (*by ECF only*)